



# Wireless Telegraphy Act 2006

## 2006 CHAPTER 36

### PART 1

#### GENERAL PROVISION ABOUT RADIO SPECTRUM

##### *Radio spectrum functions of OFCOM*

#### **1 General functions**

- (1) It is a function of OFCOM—
  - (a) to give such advice in relation to the use of the electromagnetic spectrum for wireless telegraphy,
  - (b) to provide such other services, and
  - (c) to maintain such records,as they consider appropriate for the purpose of facilitating or managing the use of the spectrum for wireless telegraphy.
- (2) It is a function of OFCOM, in relation to the use of the electromagnetic spectrum for wireless telegraphy—
  - (a) to give such further advice,
  - (b) to provide such other services, and
  - (c) to maintain such other records,as the Secretary of State may require for the purpose of securing compliance with the international obligations of the United Kingdom.
- (3) The advice, other services and records that OFCOM may give, provide or maintain under this section include advice, other services and records with respect to the use of the electromagnetic spectrum at places outside the United Kingdom.
- (4) The powers of OFCOM under Part 1 of the Communications Act 2003 (c. 21) to carry out research, or to arrange for others to carry out research, are to be exercisable, in particular, for ascertaining, for the purpose of carrying out OFCOM's functions under this section, information about—

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- (a) the demands for use of the electromagnetic spectrum for wireless telegraphy in the United Kingdom;
  - (b) the effects, in the United Kingdom, of any such use of the spectrum;
  - (c) likely future developments in relation to those matters; and
  - (d) any other connected matters that OFCOM think relevant.
- (5) OFCOM may make a grant to any person if, in their opinion, the making of the grant is likely to promote—
- (a) the efficient use in the United Kingdom of the electromagnetic spectrum for wireless telegraphy; or
  - (b) the efficient management of that use.
- (6) A grant—
- (a) may be made to a person holding a wireless telegraphy licence or a grant of recognised spectrum access or to any other person; and
  - (b) is to be made on such terms and conditions as OFCOM consider appropriate; and the terms and conditions may include terms requiring the repayment of the grant in specified circumstances.
- (7) The consent of the Treasury is required—
- (a) for the making of a grant under subsection (5); and
  - (b) for the terms and conditions on which such a grant is made.
- (8) Where OFCOM are required to give advice or provide another service to a person under this section, they may make the giving of the advice or the provision of the other service conditional on the payment to them of such sums—
- (a) as they may determine in advance; or
  - (b) as may be agreed between them and that person.
- (9) In this section references to providing a service to a person include references to a service consisting in—
- (a) the entry of that person's particulars in a register or other record kept by OFCOM for the purpose of carrying out their functions under this section; or
  - (b) the taking of steps for the purposes of determining whether to grant an application for an entry in a register or record so kept.

## 2 United Kingdom Plan for Frequency Authorisation

- (1) OFCOM must, from time to time as they think fit, publish a plan (“the United Kingdom Plan for Frequency Authorisation”).
- (2) The plan must set out—
- (a) in relation to the United Kingdom, the frequencies that—
    - (i) have been allocated for particular wireless telegraphy purposes, and
    - (ii) are available for assignment; and
  - (b) the purposes for which the different frequencies have been allocated.
- [<sup>F1</sup>(3) Before publishing the plan, OFCOM must ensure that the criteria applied to determine the allocation of frequencies for particular purposes are—
- (a) objectively justifiable in relation to the frequencies or uses to which they relate,

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- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what they are intended to achieve; and
- (d) in relation to what they are intended to achieve, transparent.]

#### Textual Amendments

- F1** S. 2(3) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 2 para. 2** (with Sch. 3 para. 2)

### 3 Duties of OFCOM when carrying out functions

- (1) In carrying out their radio spectrum functions, OFCOM must have regard, in particular, to—
  - (a) the extent to which the electromagnetic spectrum is available for use, or further use, for wireless telegraphy;
  - (b) the demand for use of the spectrum for wireless telegraphy; and
  - (c) the demand that is likely to arise in future for the use of the spectrum for wireless telegraphy.
- (2) In carrying out those functions, they must also have regard, in particular, to the desirability of promoting—
  - (a) the efficient management and use of the part of the electromagnetic spectrum available for wireless telegraphy;
  - (b) the economic and other benefits that may arise from the use of wireless telegraphy;
  - (c) the development of innovative services; and
  - (d) competition in the provision of electronic communications services.
- (3) Subsection (4) has effect in the case of OFCOM's radio spectrum functions, other than their functions under sections 13 and 22.
- (4) In the application of this section to those functions, OFCOM may disregard such of the matters mentioned in subsections (1) and (2) as appear to them—
  - (a) to be matters to which they are not required to have regard apart from this section; and
  - (b) to have no application to the case in question.
- (5) Where it appears to OFCOM that a duty under this section conflicts with one or more of their duties under sections 3 to 6 of the Communications Act 2003 (c. 21), priority must be given to their duties under those sections.
- (6) Where it appears to OFCOM that a duty under this section conflicts with another in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.

### 4 Advisory service in relation to interference

It is a function of OFCOM to provide a service consisting in the giving of advice and assistance to persons complaining of interference with wireless telegraphy.

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## 5 Directions of Secretary of State

- (1) The Secretary of State may by order give general or specific directions to OFCOM about the carrying out by them of their radio spectrum functions.
- (2) An order under this section may require OFCOM to secure that such frequencies of the electromagnetic spectrum as may be specified in the order are kept available or become available—
  - (a) for such uses or descriptions of uses, or
  - (b) for such users or descriptions of users,
 as may be so specified.
- (3) An order under this section may require OFCOM to exercise their powers under the provisions mentioned in subsection (4)—
  - (a) in such cases,
  - (b) in such manner,
  - (c) subject to such restrictions and constraints, and
  - (d) with a view to achieving such purposes,
 as may be specified in, or determined by the Secretary of State in accordance with, the order.
- (4) The provisions are—
  - (a) section 8(3);
  - (b) sections 12 to 14; and
  - (c) sections 21 to 23.
- (5) This section does not restrict the Secretary of State's power under section 5 of the Communications Act 2003 (c. 21) (directions in respect of networks and spectrum functions).

## 6 Procedure for directions

- (1) An order under section 5 must state the purpose for which a direction is given, unless it falls within section 5(2) or (3).
- (2) Before making an order under section 5, the Secretary of State must consult—
  - (a) OFCOM; and
  - (b) such other persons as he thinks fit.
- (3) Subsection (2) does not apply where the Secretary of State considers that the urgency of the case makes it inexpedient to consult before making the order.
- [<sup>F2</sup>(3A) Before making an order under section 5, the Secretary of State must take due account of the desirability of not favouring—
  - (a) one form of electronic communications network, electronic communications service or associated facility, or
  - (b) one means of providing or making available such a network, service or facility, over another.]
  - (4) No order is to be made under section 5 unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
  - (5) But subsection (4) does not apply where—

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- (a) before or in the course of the consultation required by subsection (2), or
  - (b) after the consultation and before or after a draft of the order has been laid before Parliament,
- the Secretary of State considers that the urgency of the case is or has become such that he should make the order straight away.
- (6) Where under subsection (5) the Secretary of State makes an order under section 5 without a draft of the order having been approved, the order ceases to have effect at the end of the period of forty days beginning with the day on which it was made unless, before the end of that period, it has been approved by a resolution of each House of Parliament.
- (7) For the purposes of subsection (6)—
- (a) the order's ceasing to have effect is without prejudice to anything previously done, or to the making of a new order; and
  - (b) in reckoning the period of forty days no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

#### Textual Amendments

- F2** S. 6(3A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), [Sch. 2 para. 3](#) (with [Sch. 3 para. 2](#))

#### *Reservation of spectrum for multiplex use*

### **7 Special duty in relation to television multiplexes**

- (1) This section applies where OFCOM, in the exercise of their radio spectrum functions, have reserved frequencies for the broadcasting of television programmes.
- (2) OFCOM must, in carrying out those functions, exercise their powers so as to secure, so far as practicable, that the requirement in subsection (3) is satisfied.
- (3) The requirement is that sufficient capacity is made available on the reserved frequencies for ensuring, in the case of every licensed television multiplex service, that the qualifying services are broadcast by means of that multiplex service.
- (4) “Licensed television multiplex service” means a television multiplex service the provision of which is authorised by a licence under Part 1 of the Broadcasting Act 1996 (c. 55).
- (5) “Qualifying service” and “television multiplex service” each has the same meaning as in Part 3 of the Communications Act 2003 (c. 21).

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